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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19

20 COLUMBIA PICTURES INDUSTRIES,
21 INC., et al.,

22 Plaintiffs,

23 v.

24 GARY FUNG, et al.,

25 Defendants.
26
27
28

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Case No. CV 06-5578-SVW (JCx)

DISCOVERY MATTER

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' OPPOSITION TO *EX*
PARTE APPLICATION TO
COMPEL DISCOVERY
RESPONSES**

Discovery Cutoff: None Set
Pretrial Conference Date: 10/28/13
Trial Dates: 11/5/13

1 Plaintiffs oppose Defendants' *Ex Parte* Application to Compel Responses to
2 Discovery on procedural grounds, claiming that Defendants violated Local Rule 37-1
3 and should have gone to greater lengths to meet and confer regarding Plaintiffs'
4 meager discovery responses.¹ But of course *ex parte* applications are not governed by
5 Local Rule 37-1, and if Defendants had filed a discovery motion under that Rule, they
6 could not have expected a hearing date until October 28, 2013, just five court days
7 before trial is set to commence on November 5.

8 After assuring Judge Wilson and Defendants that they would produce
9 documents last week when they provided their written discovery responses—and after
10 pressing for an early trial date—Plaintiffs objected across the board to nearly all
11 categories of discovery, clearly intending to run the clock on Defendants' time to take
12 discovery before trial. Now, they claim that they “produced the majority of ownership
13 documents” last week despite having produced copyright registrations for barely half
14 of their 4,145 alleged works, barely a third of which even identify one of the Plaintiffs
15 as registrant, and despite having produced no additional chain of title documents other
16 than a handful of assignments.

17 Similarly, Plaintiffs argue that they have adequately identified their alleged
18 works because “the copyright registration number, the date of registration, and the
19 name of the copyright registrant” is “right on the face of the copyright registration
20 certificates.” But that information cannot be used to determine the ownership of
21 Plaintiffs' works in the majority of cases where the name of the copyright registrant
22 does not match any Plaintiff.

23 Plaintiffs' assertion that they have “no obligation” to even identify the direct
24 infringements for which they intend to seek damages—which Judge Wilson ordered
25 as part of Plaintiffs' *prima facie* case, Dkt. 554 at 4—on the ground that it is “work

26
27 ¹ Plaintiffs also complain that the discovery requests and responses were not recited
28 verbatim in Defendants' Application pursuant to Local Rule 37. Of course, all of the
requests and responses were attached to the accompanying Declaration of Thomas
Kearney.

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product,” is absurd. The time for Plaintiffs to respond to contention interrogatories is now, so that Defendants are afforded the opportunity to investigate the alleged infringements and present evidence on their defenses or to challenge Plaintiffs’ claims at trial. Plaintiffs are not allowed to sandbag Defendants on the eve of trial by identifying thousands or tens of thousands of alleged acts of direct infringement by third parties that Defendants have had no opportunity to investigate.

Under the current trial schedule, Defendants had no choice but to raise the pervasive issues with Plaintiffs’ discovery responses on an *ex parte* basis. While Plaintiffs’ request for an extension until October 2 to oppose Defendants’ Application is impractical in light of the schedule, Defendants do not object to following the provisions set forth in the parties’ joint stipulation as to briefing schedules for *ex parte* applications. *See* Dkt. 611. On that schedule, Plaintiffs’ opposition to Defendants’ Application is due by 3 p.m. on Friday, September 27, 2013, and Defendants’ Reply is due on October 1. In the meantime, Defendants are happy to discuss with Plaintiffs their failure to provide nearly any of the requested discovery, and remove any issues from the Court’s consideration that can be resolved.

Dated: September 24, 2013

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By: /s/ Erin R. Ranahan

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